IN THE

Supreme Court of the United States

DOCKET NO. 78-1311

UNITED STATES EX REL. MARSHALL P. SAFIR and MARSHALL P. SAFIR,

Petitioners,

vs.

AMERICAN EXPORT LINES, LYKES BROS. S.S. CO. INC., AMERICAN PRESIDENT LINES, FARRELL LINES INC., PRUDENTIAL LINES INC., P.S.S. STEAMSHIP CO. INC., UNITED STATES LINES INC., MOORE McCORMACK LINES INC.,

Respondents.

Petition for Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Petitioner Marshall P. Safir, individually as well as for the United States of America respectfuly prays that a Writ of Certiorari issue to review the affirmation by the United States Court of Appeals for the Second Circuit of the judgment of the federal district court below dismissing the Petitioner's *qui tam* action for lack of jurisdiction. This case involves novel questions of federal law directly

pertaining to the proper interpretation of the jurisdictional provisions of the False Claims Act (31 U.S.C. §231 *et seq.*) and the propriety of the application of those provisions so as to bar the Petitioner's *qui tam* action. The Petitioner's action brought to light an uncontroverted fraud perpetrated upon the United States of America by a group of subsidized government contractors through bribery and collusion with ex-President Richard Nixon and others to frustrate the recovery of moneys illegally claimed and paid out of the Treasury of the United States.

OPINIONS

The Opinion of the Court of Appeals for the Second Circuit is reported at 579 F.2d 742 (1978), and appears in the Appendix at page 15a. The Court of Appeals' Order denying the Petition for Rehearing and Rehearing En Banc on November 28, 1978 appears at page 3a. The Court of Appeals' Order denying the Petition in the Appendix at page 5a. The unreported Memorandum Opinion of the federal district court below appears in the Appendix at page 25a.

Prior opinions in related actions instituted by Petitioner are:

Safir v. Gibson, 417 F.2d 972 (2nd Cir. 1969) SAFIR I.

Safir v. Gibson, 432 F.2d 137, 145 (2nd Cir. 1970) *cert. denied*, 400 U.S. 850 (1970) *cert. denied also sub nom. American Export Lines Inc. et al. v. Gibson*, 400 U.S. 942 (1970) SAFIR II.

Safir v. Blackwell, et al., 469 F.2d 1061 (2nd Cir. 1972) SAFIR III.

Safir v. Kreps, et al., 551 F.2d 447 (D.C. Cir. 1977) *cert. denied*, 46 U.S.L.W. 3215 (1977) SAFIR IV.

Also Maritime Subsidy Board Investigation of Alleged Section 810 Violation S-243, 14 Pike & Fisher Shipping Reg. Reporter 77, 78 (1973) also 13 SRR 809 (1973) and 12 SRR 1105 (1972).

JURISDICTION

The Court of Appeals for the Second Circuit affirmed the judgment of the federal district court on June 27, 1978. A timely Petition for Rehearing and Rehearing on En Banc was denied on November 28, 1978. This Petition for Certiorari is filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1254(1) (1970).

STATUTES INVOLVED

The False Claims Act, 31 U.S.C. 232(a)(b)(c)(e), 233, 235 (Appendix p. 165a).

The Merchant Marine Act of 1936—Sec. 810, 46 U.S.C. 1227 (Appendix p. 164a).

QUESTIONS PRESENTED

1. Whether the jurisdictional provisions of Sec. 232 (c) of the False Claims Act should be interpreted and applied in a manner which denies access to the federal courts by a private suitor when the information he gave regarding the fraud prior to filing suit was given to those government officials who had entered into a corrupt arrangement with the perpetrators of the fraud and whose interest it was to conceal the fraud and to defeat its prosecution.

2. Whether without raising the issue of government complicity which singularly exists here, the 9th Circuit's *literal* reading of 31 U.S.C. 232(c) is a proper interpretation or whether the 2nd Circuit's interpretation of a *liberal* reading would more effectively carry out the legislative intent of the section in suits which are not considered parasitical.

STATEMENT OF THE CASE

This petition stems from the affirmation by the United States Court of Appeals for the Second Circuit of an order of dismissal on jurisdictional grounds by Judge John F. Dooling Jr. U.S. District Court for the Eastern District of New York of a civil action under the False Claims Act 31 U.S.C. 231, 232, 233 and 235 for a judgment declaring the defendants liable for penalties and for refund of double the sums paid out to the shipping lines found in violation of Sec. 810 of the Merchant Marine Act of 1936 (46 U.S.C. 1227) as a consequence of the collateral estoppal effect of this violation on 31 U.S.C. 231, the False Claims Act (hereinafter referred to as FCA) and for an order implementing such recovery on behalf of the petitioners herein, United States of America, ex rel Marshall P. Safir and Marshall P. Safir. This action was filed on May 27, 1977 under Docket 77C-1093 and is separate and distinguishable from Docket 68C-643 which is the subject matter of Petition for Certification, Docket 78-1239.

Petitioners alleged that the illegal behavior was in violation of the operating differential subsidy contract signed between the government and the contractors incorporating the wording of Sec. 810, and that the clear provision of the statute and subsidy contracts, both binding on the defendants, were deceitfully violated when without any overture to the Department of Commerce they acted in concert to destroy an unsubsidized American flag competitor. Petitioners further alleged in this complaint which was filed on May 27, 1977 that these actions were inimicable to the interest of the United States in that the weight and leverage of subsidy funding was used to destroy an American competitor without the knowledge of the contracting agency charged with the responsibility for promoting the welfare

of the American Merchant Marine (Complaint Appendix pp. 79a-88a).

Simultaneous with the filing of the complaint a notice of pendency was served on the United States Attorney for the Eastern District of New York and the Attorney General of the United States. This was done in accordance with subsection C of 31 U.S.C. Sec. 232. Appendix page 86a. On June 21, 1977 the office of the United States Attorney for the Eastern District, on behalf of the United States, waived the government's rights in this "Qui tam" action by filing a declination of appearance in the action allowing appellant Safir to proceed on behalf of the United States. App. p. 87a.

No effort was made by the Attorney General to inquire further although relator stated in the notice "If additional information is needed the undersigned is prepared to cooperate fully." In response to a subsequent subpoena by the defendants, relator set forth additional information which he was prepared to offer the Attorney General had he been requested to do so.

As stated by Judge Dooling in his order of dismissal (App. p. 38a). "Plaintiff said he did have information to bring forward at the present time, based on the fact that the case 77C-1093 had been filed. Annex A sets forth the relevant parts of the testimony he then gave about the content of the new disclosures to him." See Annex A, App. pp. 46a-63a.

"The new material related to a "corrupt arrangement to frustrate plaintiff's endeavor to vindicate his claims" whereby for a gross consideration of $7,000,000.00, ex-President Richard Nixon, in the summer of 1968, after nomination and before election, entered into such conspiracy with one Spyros Skouras, Sr. representing the defendants. Since the claims to be vindicated by plaintiff were for the benefit of the United States the conspiracy, in ef-

fect, was against the United States. The purposes and partial accomplishments of this endeavor are set forth in the transcript of the hearing before Judge Dooling on October 28, 1977 (App. pp. 66a-78a).

In short the purpose was to arrange, upon his election, a minimal settlement of the Sapphire Steamship Lines Inc. anti-trust case and to frustrate Petitioner Safir's actions for subsidy recovery for the United States. This was to be done through all means, not excluding judicial influence, administrative harassment, and attrition. This deal is alleged to have been made in 1968 prior to his taking the oath of office. One of the conditions alleged to be precedent was Nixon's agreement to name Skouras's Greek-American friend, Spiro Agnew, as his running mate. For recent related subject matter, *see* N.Y. Times, February 18, 1979 (App. pp. 174a-177a). The $7,000,000.00 fund, upon information and belief, went first to a settlement of $2,400,000.00 for the Anti-Trust Case (see *In the Matter of Sapphire S.S. Lines and J. Read Smith Trustee v. Winthrop Stimson Putnam and Roberts*, 509 F.2d 242, 43, 44 (1975). The remainder of $4,600,000.00 and its whereabouts was the subject of request for subpoena from Judge Dooling which was denied upon dismissal of the case (*See* Motion for Nixon Tapes Appendix pp. 154a-155a).

Defendants moved for summary judgment after the hearing, a Memorandum and Order was filed on December 23, 1977 granting the motion of the defendants on the grounds that the District Court was without jurisdiction to proceed with the case because all of the information necessary for prosecution was already in the hands of the United States at the time the suit was filed. (App. 39a *et seq.*)

The suit *U.S.D.C.* N.Y.E.D. Docket 77C-1093 was filed within 6 years of the time that the final payments were

made as stated in *U.S. v. Klein*, 230 F. Supp. 426 (W.D. Pa. 1964); *aff'd*, 356 F.2d 983 (3rd Cir. 1966)

> ". . . it is the last date when the government paid any money or a particular claim by which anchorage may be had with the jurisdiction required to maintain a false claims action."

See also U.S. v. Bornstein, 423 U.S. 303 (1976).

The court in a peremptory conclusion on *no stated grounds* held that the new material was not germane to the False Claims Act case. Petitioner can only assume that since the corrupt arrangement was concluded in 1968 that it was considered not germane to False Claims filed in 1965, 1966.

The final residual increments of these claims were not vouchered until 1971 however (see Judge Doolings injunction pendente lite app. 103a-108a) *three years after the corrupt arrangement had been established.*

Annex A to Judge Dooling's order is excerpted from the subpoenaed deposition of Marshall Safir by the Contractor defendants. The extrapolation is selective but its implications when taken in the light of the fact that the false claims were being filed 3 years after the corrupt arrangement began destroys the finding of irrelevancy.

The Court of Appeals held that clarification of the meaning of Sec. 232(c) would be of benefit to the Courts in general if the Supreme Court would assume the task. (*See* App. p. 24a).

This petition is companion to Petition 78-1239 *Safir v. Robert W. Blackwell* individually and as Asst. Secy. of Commerce, *et al.* The general fact situation out of which both arose is the same although the questions of law

submitted involve discrete issues which have not been reviewed by this Court, the effect of fraudulent conduct by Government officials on the jurisdictional bars of both Sec. 232(c) (prior knowledge in the hands of the Government) and Sec. 235 (the 6 year statutes of limitations) and the FCA as it applies to prior actions amended under *Rule* 15c of FRCP. That petition was filed on Friday, Feb. 9, 1979. Mr. Blackwell resigned as Assistant Secretary of Commerce for Maritime Affairs on the following Monday, Feb. 12, 1979 (*See* Appendix pp. 168a-169a).

REASONS FOR GRANTING THE WRIT

The dismissal of the complaint herein, see appendix pp. 79a-85a was based on the clause (c) in 31 U.S.C. §232 added by the Act of December 23, 1943, 57 Stat. 608 which reads:

> The court shall have no jurisdiction to proceed with any [*qui tam*] suit whenever it shall be made to appear that such suit was based on evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought.

The Rippetoe exception

Petitioners submit that there is one unassailable exception to this bar to jurisdiction and that is as stated by Chief Judge Parker in *United States v. Rippetoe*, 178 F.2d 735, 736 (4th Cir. 1949), in reversing a similar grant of summary judgment:

> ". . . we do not think that knowledge on the part of a government official who is implicated in the fraud precludes suit by the informer . . ."

Stated by the Court in *Rippetoe, supra*, page 737:

> "It is a well settled principle of law that knowledge of an agent who is engaged in an attempt to defraud his principal will not be imputed to the principal *American Surety Co. v. Pauly*, 170 U.S. 133; 2 Am. Jur. 298-299; ALI Restatement of Agency Sec. 282(1). *Some of the worst frauds upon the government have been those in which officials have participated;* and it is hardly reasonable to suppose that Congress intended to forbid suits by informers based on such frauds, merely because of the knowledge of a false agent who partic-

> ipated in the fraud and whose interest would be to conceal it. There is reason in saying that an informer may not sue on a claim in which those who may be expected to protect the interests of the government have knowledge; and this is clearly what the act means. *This reasoning does not apply, however, where the knowledge is in possession of one who has participated in a fraud on the government and is interested in concealing it.* To so hold would in large measure emasculate the statute and deprive the public of its benefit in cases where it is most needed. It is clear that the amendment enacted into law and the views expressed by Mr. Justice Jackson in his dissenting opinion in United States ex rel. Marcus v. Hess, supra; and it can be as well said of the amended statute as was said in that dissenting opinion of the statute prior to amendment: "If it (the statute) were construed according to its spirit to reward those who disclose frauds otherwise concealed or who prosecute frauds otherwise unpunished, it would serve a useful purpose in the enforcement of the law and protection of the Treasury." (U.S. ex rel. *Marcus v. Hess*, 317 U.S. 537, 63 S. Ct. 391). (Emphasis added)

This unassailed exception has received surprising corroboration in the recent decision in *Chas Pettis ex rel. United States v. Morrison Knudsen, et al.*, 557 F.2d 668 (9th Cir. 1978). Surprising because Judge Sneed for the Court took a completely literal interpretation of §232(c) which is in conflict with the unhappiness in the Second Circuit with such literality (see appendix pages 22a-24a).

The Ninth Circuit in *Pettis, supra* at page 673:

> [4] Our interpretation of the statute is supported by the Third Circuit, which is the only other circuit to have decided the precise question before us. *United States v. Aster*, 275 F.2d 281 (3rd Cir. 1960). Appellant argues that we should not follow Aster, but rather should be guided by the liberal construction

policy he asserts is required by the Supreme Court. It is true that in determining what actions are covered by the term "claim" in the False Claims Act, the Court indicated a narrow construction is inappropriate. *United States v. Neifert-White*, 390 U.S. 228, 88 S. Ct. 959, 19 L.Ed.2d 1061 (1968) (application for a loan treated as a claim). We are not convinced, however, that the Supreme Court would have us abandon the literal interpretation of the jurisdictional bar which, as indicated, is strongly suggested by the available legislative history. It is one thing to extend the reach of the statute to provide additional protection to the United States; it is quite another to permit the bringing of a private suit *after* the United States, being apprised of the facts, fails to act. Public benefit is clearly served by the first; *only by assuming a corrupt and enfeebled federal government would it be unmistakably served by the second. Congress in enacting the 1943 amendments did not proceed on such an assumption nor do we think we should.*[3]

Of course, a different situation exists when the corruption out of which the false claim arose also serves to prevent government action, as where, for example, a corrupt public official who is a party to the fraud prevents governmental action by concealment or otherwise. Under such conditions it is highly artificial to insist that the government "possesses" the information for the purposes of invoking the jurisdictional bar. (Emphasis added)

This differs from the Second Circuit which would reject *Aster, supra*—would question that decision on the grounds that the Third Circuit extended the clause "beyond the evil sought to be remedied and gives it a broader effect than would be indicated by the legislative

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[3] We, of course, disapprove *United States ex rel. Davis v. Long's Drugs, Inc.*, 411 F. Supp. 1144 (S.D. Cal. 1976) to the extent that it suggests that Aster was wrongfully decided and that all provisions of the False Claims Act should be liberally construed to foster claims being brought.

history reviewed by Judge Hastie in the District Court decision . . ."

The conflict should therefore be settled by this Court under the first sentence of *Rule* 19(b) but for the purposes of these petitioners the question raised is only an alternative in the event that this Court upholds the finding that new information of the corrupt scheme hatched in 1968 is *not* germane to the false claims paid in 1971 under a new theory of relevancy.

It suffices for this petition based on a dismissal for lack of subject matter jurisdiction that the allegations regarding the "corrupt arrangement" as set forth in the pleadings (*see* transcript Oct. 28, 1977, appendix pp. 69a-75a) must be accepted as true because they were uncontroverted. *Carr v. Learner*, 547 F.2d 135, 137 (2nd Cir. 1976); *United States v. New Wrinkle Inc.*, 342 U.S. 371, 376 (1976). *Cf.* 5 Wright & Miller, F. P. & P. §§1350 p. 551-553 (1969).

The New Material furnished by Safir is not only germane but Basic to the District Court's Cognizance of the Case

The court in a peremptory conclusion on *no stated grounds* held that the new material was not germane to the False Claims Act case. Petitioner can only assume that since the corrupt arrangement was entered into in 1968 that it was considered not germane to False Claims filed in 1965, 1966. However, the final residual increments of these claims were not vouchered until 1971 (*see* Injunction pendente lite app. 103a-108a). Annex A to Judge Dooling's order is excerpted from the subpoenaed deposition of Marshall P. Safir by the Contractor defendants. The extrapolation is selective but its implications when taken in the light of the fact that the false claims were

being filed 3 years after the corrupt arrangement began destroys the finding of irrelevancy.*

The new material set forth the conspiracy of the defendants working in collusion with the ex-President Nixon through the Department of Commerce and the Assistant Secretaries for Maritime Affairs, Andrew Gibson, and his successor, Robert W. Blackwell, to defeat the relator Safir by concealment of the fraud until more than 6 years had passed from the first filing of vouchers for subsidy payments see Appendix pages 66a-78a transcript of Safir statement at hearing before Judge Dooling October 28, 1977.

In *Safir v. Blackwell, et al.*, Petition 78-1239 the petitioner set forth how the corrupt scheme had blossomed into a wholesale conflict of interest when the National Maritime Counsel was formed. *See* Pet. 78-1239—also page 29, The 32nd Report of the House Committee on Government Operations, 95th Congress 2nd Session No. 95-1680. Union Calendar No. 908 entitled:

"Report on the Problems in the Relationships between the Commerce Dept.'s Maritime Administration and the National Maritime Council, a Private Trade Organization."

While the Nixon appointees, Andrew Gibson and his successor, Robert Blackwell, conducted the investigation of the "alleged" violation of 46 U.S.C. 1227 (Sec. 810 of the Merchant Marine Act) as Assistant Secretaries of Commerce they mantained "intimate daily ties" with the shipping interests affected by Maritime Administration subsidy and regulatory actions. *See* House Report, *supra*,

* There was an imprecise reference to the Special Prosecutor's Office in the Safir deposition (*see* Appendix p. 160a).

The Special Prosecutor, if indeed he did have the information, did not turn over his files to the Attorney General until the summer of 1977 at least one month or more *after* Docket 77-1093 was filed (May 27, 1977).

page 4. Andrew Gibson, prior to assuming his post as Maritime Administrator, had been an employee of Spyros Skouras in Prudential Grace Lines. His successor, Blackwell, in addition to his actions cited in the House Report, *supra*, pages 1-16 and the additional views of Congressman Paul McCloskey was the subject of additional apparent conflict of interest and impropriety in 1976 as described by Congressman McCloskey in the Journal of Commerce article of February 14, 1979, *see* Appendix p. 173a.

So it is abundantly clear that Mr. Blackwell's resignation coming on Monday, Feb. 12 was the result of the filing of the petition against him on Friday, Feb. 9. This statement, while conclusory, cannot be avoided, and it further calls into question the finding in the courts below that the "new material" was not germane to the False Claims Case under the *Rippetoe* and *Pettis* exception to Sec. 232(c). The plain fact is that the government officials who "controlled the prosecution" in this case could not have been those whose interest it was to prosecute the fraud because the knowledge disclosed after the filing of the case by this relator was—as to the prior knowledge freely given before filing U.S. *ex rel. Safir v. American Export, et al.*— the knowledge which eliminated the bar to the Court's jurisdiction.

The answer to the jurisdiction of the Court does not lie in the decision in *U.S. and Aloff v. Aster*, 275 F.2d 281 (3rd Cir. 1960), where the integrity of the officials to whom the information was brought prior to filing suit was not questioned nor does it lie in *U.S. ex rel. Greenberg v. Burmah Oil Ltd.*, 558 F.2d 43, 46 (1977), where the relator developed the preponderance of her information from the public media nor does it resemble *U.S. ex rel. McCann v. Armour & Co.*, 146 F. Supp. 546 *aff'd* 254 F.2d 90 (1958) where the relator had been employed by the government and used evidence obtained during employment.

The answer is to be found in an understanding of Judge Parker's opinion in *U.S. v. Rippetoe, supra,* where government officials whose interest may be to conceal a false claim are distinguishable from those government officials whose knowledge may be expected to protect the interest of the United States.

The answer is to be found in the Second Circuit's own exception in *U.S. ex rel. Greenberg v. Burmah Oil Ltd., supra*:

> "Only where the process of organization produced new information such as the disclosure of the existence or nature of a fraud, could it arguably provide a sufficieint predicate for jurisdiction." (558 F.2d at p. 46)

Can the unrefuted disclosures in the Safir deposition and demand for further discovery through the now available Nixon tapes be summarily dismissed as irrelevant in the light of this exception? (*Cf. Dellums v. Powell,* 516 F.2d 242 (D.C. Cir. 1977) *cert. denied* 98 SCR-234 (1978)).

Unlike "Greenberg" the development of this case was an individual initiative of appellant Safir over a period of 13 years in arduous adversary proceedings in courts and commissions and administrative hearings. The development of the case would not have been accomplished without this effort. Judge Dooling in agreement, states:

> ". . . a great deal of the information and evidence possessed by the government and much of the impetus to action derived from plaintiff."

When Judge Dooling rejected the "serious reservations" about the validity of *U.S. ex rel. Aloff v. Aster, supra,* in *U.S. ex rel. Davis v. Long's Drugs Inc.,* 411 F. Supp.

1144 (S.D. Cal. 1976) presupposed that honest government officials were in control to protect the interests of the United States—and under ordinary circumstances his approach is sound and reasonable—and this respect for the integrity of a co-equal branch of government under most circumstances is right and proper.

But not in this case. The District Court was well aware of the decision in the District of Columbia Circuit in *Safir v. Kreps*, 551 F.2d 447 (1977) and indeed discusses it in his Memorandum (Appendix pages 31a-32a). He repeated Judge Wright's opinion that the Nixon appointee, Secretary of Commerce Frederick Dent, in his order mitigating subsidy recovery to approximately $1,000,000.00 for illegal subsidies paid out in the sum of $227,000,000.00 "gave little assurance that his order resulted from a reasoned decision-making process." In the light of the Safir deposition the Secretary's failure to come to grips with the evidence in the record which had been subject to delay and unwarranted mitigative abuse by the Hearing Examiner and the Maritime Subsidy Board during the years 1970 to 1974 becomes more significant. This failure darkens the conspiratorial coloration and casts a deep shadow on the integrity of the Department of Commerce in the handling of the Safir case from its inception to the holdover Blackwell's resignation.

The public interest would be best served by a liberal interpretation of Section 232(c)

Petitioner Safir submits that where the government waived under Sec. 232(c) by failure to reply to the notice of pendency or declination in writing (as was the case here) and makes no move to oppose the private suitor

from proceeding with the action, that waiver in itself was the predicate for jurisdiction. It represented the position of the United States and a determination from the Safir disclosures before, during and after the filing of the FCA case in Docket 77-1093 the measure of its own rights and the method by which relief should be obtained.

In the game of football the option to punt is within the measure of the rights of the team in possession of the ball. A punt in this manner could, as stated above, be an effective tool against "graymail" or merely an embarrassing lack of diligence by what Judge Friendly calls the "law offices" of the government.

The Northwestern University L. Rev. 67:446 (1972): "*Qui tam* suits under the False Claims Act: Tool of the Private Litigation in Public Actions" at pages 470-471 raises a question which, because of the gross nature of the fraud alleged here and the fact that the recipients of the alleged bribe were in so exalted a position as to, in the words of Judge Sneed in *Pettis* "enfeeble" the government, whether the 1943 Amendment to 232(c) has the effect of prohibiting a *qui tam* action where the government possesses evidence of the false claim *but is unable or unwilling to prosecute either for corrupt or political reasons.* To this, petitioners would add—even for legitimate reasons where in spite of known corruption national security might be endangered if the Department of Justice carried forward the prosecution but where national security would not be endangered if a citizen-advocate prosecuted such abuses via civil action in the public interest.

It is perhaps in this latter instance that the False Claims Act can be an effective tool against abuse of power by circumventing so-called "gray mail" wherein the corrupt officials threaten to disclose government secrets ir-

relevant to the case when the government brings the action. The Second Circuit decision would foreclose this seemingly worthwhile objective. Presidents arguably should be immunized from civil suits for acts in office performed in a broad interpretation of "good faith" and if there is no body of case law holding their actions to be illegal but there can be no "good faith" in a complicity in a contractor's false claims not even for a President.

Safir's three choices

Judge Friendly in affirming the dismissal of the complaint in Docket 77C-1093 (see appendix p. 79a) stated that petitioner had three choices in the 1960's.

1. He could have instituted a treble damage suit on behalf of himself and his company.

Petitioner in 1966 instituted such an action and this action was examined in the Second Circuit. See *In the Matter of Sapphire S.S. Lines and J. Read Smith Trustee v. Winthrop Stimson Putnam and Roberts*, 509 F.2d 242 (1975). The lack of diligence of trustee's anti-trust counsel Joseph Alioto in pursuing a settlement favorable to the creditors was the subject of critical analysis by the 2nd Circuit panel. When petitioner was forced out of business through this bankruptcy, he lost control of the suit to a trustee and made the "corrupt arrangement" viable. (See appendix pp. 153a-155a, also see article in the Wall Street Journal, February 13, 1979 on the potential for cash liquidity to satisfy "laundered" repayment obligation for Pacific Far East Lines stock (appendix pp. 170a-172a).

The Second Circuit at the time of its decision in Safir I (1969) was informed that petitioner had filed but no longer controlled this treble damage action (see Safir I at page 978, footnote 8).

2. He could "if he had thought of it" have withheld at least some information from the government and brought a *qui tam* action under 31 U.S.C. 231, 232.

Petitioner did just that in Docket 77C-1093 when he disclosed the "corrupt arrangement" after the suit was filed in May, 1977. The lower court which suggested such an option rejected the information (in a low profile footnote appendix p. 22a) as not being germane to the False Claims case and thereby rejected the suit under a more literal reading of 232(c) than *Pettis* or *Rippetoe!!*

3. He could endeavor to force the Maritime Administration to act to recover the subsidy payments and thereby involve the government in the "full expense of the prosecution."

There was no prosecution. There was an investigation and a planned avoidance of prosecution by a non-statutory settlement in utter disregard of "the interest of the victim" set forth in Safir I by the learned Circuit judge who 10 years later would foreclose relief by abandoning this protected interest (Safir I at 978, *ibid.* footnote 7) with a sorrowful pat on the back.

CONCLUSION

For the reasons set forth above Petitioners, United States and Marshall P. Safir pray that this Petition for Certiorari be granted.

Respectfully submitted,

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Dated: February 23, 1979